

## CHAPTER E

### FINAL CHARGE TO JURY GENERAL INSTRUCTIONS AND GENERAL FORMS OF VERDICT

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#### NOTES ON CHAPTER USE

The instructions in this chapter describe the function of the court, jury and counsel. They also explain the purposes and uses of the information, burden of proof, reasonable doubt, presumption of innocence, and credibility. Appropriate instructions should be read to the jury and given to the jury in written form.

## **E:01 DUTY OR FUNCTION OF JUDGE AND JURY**

Members of the jury, the evidence in this case has been completed. In a moment I will read to you the law which you must apply in order to reach your verdict. But first, I want to mention a few things that you need to keep in mind when you are discussing this case in the jury room.

It is my job to decide what rules of law apply to the case. While the lawyers may have commented during the trial on some of these rules, you are to be guided by what I say about them. You must follow all of the rules as I explain them to you. Even if you disagree or don't understand the reasons for some of the rules, you must follow them. No single rule describes all the law which must be applied. Therefore, the rules must be considered together as a whole.

During the course of the trial you received all of the evidence that you may properly consider to decide the case. Your decision must be made by applying the rules of law which I give you to the evidence presented at trial. Neither sympathy nor prejudice should influence your decision.

[You should not allow gender bias or any kind of prejudice based upon gender to influence your decision.]

[If you decide that the prosecution has proved beyond a reasonable doubt that the defendant has committed the crime[s] as charged, it will be my job to decide what the punishment will be. It should not enter into your consideration at any time.]

At times during the trial lawyers made objections to questions asked by other lawyers, and to answers by witnesses. Do not draw any conclusions from such objections or from my rulings on the objections. These only related to the legal questions that I had to determine and should not influence your thinking. When I told you not to consider a particular statement, you were told to put that statement out of your mind, and you may not consider any statement in your deliberations which you were instructed to disregard.

[Sometimes in the trial I have asked questions of witnesses. When I asked questions, that did not indicate I had any opinion about the facts in the case.]

Finally, you should consider all the evidence in the light of your observations and experience in life.

### **NOTES ON USE**

Add bracketed paragraph four in sexual assault cases. Delete paragraph five if the case is one in which the prosecution is seeking the death penalty.

## **SOURCE & AUTHORITY**

*Bishop v. People*, 165 Colo. 423, 439 P.2d 342 (1968).

§18-3-408, C.R.S.

## **E:02 THE CHARGE AGAINST THE DEFENDANT**

The charge[s] against the Defendant [is][are] the prosecutor's claim[s] that the defendant committed [a][the] crime[s]. The charge[s] [is][are] not evidence that the Defendant committed the crime[s], and are merely accusations. In this case the charge[s] [is][are]: [list charge(s)].

## **E:03 PRESUMPTION OF INNOCENCE BURDEN OF PROOF GENERALLY REASONABLE DOUBT**

Every person charged with a crime is presumed innocent. This presumption of innocence remains with the defendant throughout the trial and should be given effect by you unless, after considering all of the evidence, you are then convinced that the defendant is guilty beyond a reasonable doubt.

The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt the existence of all of the elements necessary to constitute the crime charged.

Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

If you find from the evidence that each and every element has been proven beyond a reasonable doubt, you should find the defendant guilty. If you find from the evidence that the prosecution has failed to prove any one

or more of the elements beyond a reasonable doubt, you should find the defendant not guilty.

#### **NOTES ON USE**

This instruction must be given in every criminal case, except in sanity trials.

This instruction combines the three traditional instructions on "Presumption of Innocence," "Burden of Proof" and "Reasonable Doubt."

#### **SOURCE & AUTHORITY**

*People v. Palumbo*, 192 Colo 7, 555 P.2d 521 (1976).

*People v. Salas*, 189 Colo 111, 538 P.2d 437 (1975).

*People v. Trujillo*, 186 Colo 329, 527 P.2d 52 (1974).

*People v. Sharpe*, 183 Colo 64, 514 P.2d 1138 (1973).

*People v. Bowen*, 182 Colo 294, 512 P.2d 1157 (1973).

#### **E:04 NUMBER OF WITNESSES**

The mere number of witnesses testifying for or against a certain point does not necessarily prove or disprove that point.

#### **NOTES ON USE**

To be used when requested or when applicable.

#### **SOURCE & AUTHORITY**

*Jachetta v. Milano*, 147 Colo 100, 362 P.2d 1065 (1965), and cases cited therein.

## **E:05 CREDIBILITY OF WITNESSES**

In deciding what testimony to believe, you should carefully consider all of the testimony given and the circumstances under which each witness has testified.

Consider each witness' knowledge, motive, state of mind, demeanor, and manner while on the stand. Consider the witness' means of knowledge, ability to observe, and strength of memory. Consider also any relationship each witness may have to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence which affects the credibility of the witness' testimony.

You may believe all of the testimony of a witness, part of it, or none of it.

### **NOTES ON USE**

This instruction is to be used in all cases.

## **E:06 EXPERT WITNESSES**

You have heard [a] witness[es] who [has] [have] testified as expert[s]. You are not bound by the testimony of [the] expert[s]; this testimony is to be weighed as that of any other witness. It is entirely your decision to determine what weight shall be given the testimony.

### **SOURCE & AUTHORITY**

*Hampton v. People*, 171 Colo. 153, 465 P.2d 394 (1970).

*Palmer v. People*, 162 Colo. 92, 424 P.2d 766 (1967).

*People v. King*, 181 Colo. 439, 510 P.2d 333 (1973).

### **E:07 TESTIMONY OF DEFENDANT - NOT COMPELLED**

The defendant does not have to testify. The decision not to testify is not evidence, does not prove anything, and should not be considered for any purpose.

#### **NOTES ON USE**

This instruction must be given if the defendant requests it.

#### **SOURCE & AUTHORITY**

*People v. Crawford*, 632 P.2d 626 (Colo.App. 1981).

### **E:08 JURORS' CONDUCT DURING TRIAL-DISCUSSIONS OUTSIDE PRESENCE OF ENTIRE JURY**

Members of the jury, you may discuss this case only when you are all present and you may only deliberate in the jury room. No juror should attempt to discuss this case with other jurors or anyone else at any other time except when all twelve jurors are in the jury room.

### **E:09 QUESTIONS DURING DELIBERATIONS**

Once you begin your deliberations, if you have a question, your foreperson should write it on a piece of paper, sign it and give it to the bailiff, who will bring it to me.

The Court will then determine the appropriate way to answer the question.

However, there may be some questions that, under the law, the Court is not permitted to answer. Please do not speculate about what the answer to your question might have been or why the Court is not able to answer a particular question.

## SOURCE & AUTHORITY

4:2A Colorado Civil Jury Instructions

### **E:10 JUROR QUESTIONS OF WITNESSES**

During this trial you were permitted to submit written questions to witnesses. If a particular question was not asked, do not guess why the question was not asked or what the answer might have been. My decision not to ask a question submitted by a juror is not a reflection on the person asking it, and you should not attach any significance to the failure to ask a question. By making legal rulings on the admissibility of questions, I did not intend to suggest or express any opinion about the question. My decision whether or not to allow a question is based on the applicable rules of evidence and other rules of law, and not on the facts of this particular case. It is my responsibility to assure that all parties receive a fair trial according to the law and the rules of evidence.

The fact that certain questions were not asked must not affect your consideration of the evidence in any way. Do not give greater weight to questions submitted by yourself or your fellow jurors. In making your decision, you must consider all of the evidence that has been presented.

### **E:11 MULTIPLE COUNTS**

In this case a separate offense is charged against [one or more of] [each of] the defendant(s) in each count of the [information][indictment]. Each count charges a separate and distinct offense and the evidence and the law applicable to each count should be considered separately, uninfluenced by your decision as to any other count. The fact that you may find [all or some of] the defendant(s) guilty or not guilty of one of the offenses charged, should not control your verdict as to any other offense charged against [any of] the [other] defendant(s).

The defendant(s) may be found guilty or not guilty of any

one or all of the offenses charged.

#### **NOTES ON USE**

This instruction is to be used whenever there is more than one count charged in the information or indictment.

The bracketed portions are to be used whenever there are multiple defendants, and one or more of the defendants is charged with more than one offense.

#### **SOURCE & AUTHORITY**

§18-1-408, C.R.S.

COLJI-Crim No. 38:02 (1973)

#### **E:12 MULTIPLE DEFENDANTS**

In this case, you must decide separately whether each of the [two] [several] defendants is guilty or not guilty. If you cannot agree upon a verdict as to [both] [all] the defendants, but do agree as to one [or more] of them, you must render a verdict as to the one [or more] upon which you do agree.

It is your duty to give separate personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out entirely any evidence admitted solely against some other defendant or defendants. Each defendant is entitled to have his case determined from evidence as to his own acts and mental culpability, and any other evidence in this case which may be applicable to him. You must state your finding as to each defendant uninfluenced by your verdict as to [the other] [any other] defendant.



**NOTES ON USE**

This instruction can only be given when more than one defendant is on trial at the same time.

**SOURCE & AUTHORITY**

COLJI-Crim No. 38:03 (1973)

### **E:13 LESSER INCLUDED OFFENSES**

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser offense, the commission of which is necessarily included in the offense charged if the evidence is sufficient to establish his guilt of the lesser offense beyond a reasonable doubt.

The offense of \_\_\_\_\_(insert crime charged), as charged in the [information][indictment] in this case necessarily includes the lesser offense(s) of \_\_\_\_\_.(insert all lesser offenses)

(Using the appropriate elemental instructions for (the) (each) lesser included offense(s) as a guide, insert at this point what constitutes the particular offense, leaving out the last two paragraphs of the instruction (beginning with the word "after"). The lesser included offenses are to be listed from highest degree to lowest if there is more than one lesser included offense.)

You should bear in mind that the burden is always upon the prosecution to prove beyond a reasonable doubt each and every material element of any lesser included offense which is necessarily included in any offense charged in the [information][indictment]; the law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

After considering all the evidence, if you decide that the prosecution has proven each of the elements of the crime charged or of a lesser included offense, you should find the defendant guilty of the offense proven, and you should so state in your verdict.

After considering all the evidence, if you decide that the prosecution has failed to prove one or more elements of the crime charged or of a lesser included offense, you should find

the defendant not guilty of the offense which has not been proved, and you should so state in your verdict.

While you may find the defendant not guilty of [any or all of] the crime(s) charged, or of any or all lesser included offenses; you may not find the defendant guilty of more than one of the following offenses:

(Here insert the offense charged and all lesser included offenses by name).

#### **NOTES ON USE**

Use this instruction twice or more when you have more than one substantive charge in the information or indictment which have lesser included crimes.

To determine whether one offense is a lesser included offense of another, appellate courts apply the statutory elements test of *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). This requires comparison of the statutory elements of each offense, not of the evidence presented on those elements. *Meads v. People*, 78 P.3d 290 (Colo. 2003); *People v. Rodriguez*, 914 P.2d 230 (Colo. 1996); *People v. Graybeal*, 155 P.3d 614 (Colo.App. 2007).

#### **SOURCE & AUTHORITY**

COLJI-Crim. No. 38:06 (1983)

**E:14 SPECIAL VERDICT FORM – LESSER OFFENSES**

District Court, [City and] County of \_\_\_\_\_, Colorado  
Case No. \_\_\_\_\_, Div. \_\_\_\_\_

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JURY VERDICT [COUNT NO. \_\_\_\_\_], CHARGE  
OF \_\_\_\_\_.  
(insert crime charged)

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People of the State of Colorado  
vs.

\_\_\_\_\_,  
Defendant.

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I. [fn\*] We, the jury, find the defendant

\_\_\_\_\_,'

(insert name)

NOT GUILTY of Count No. \_\_\_\_\_, \_\_\_\_\_,  
and

(insert crime

charged)

the lesser included offense(s) of

\_\_\_\_\_.  
(here list all lesser included offenses)

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FOREPERSON

II. [fn\*] We, the jury, find the defendant,

\_\_\_\_\_,  
(insert name)

GUILTY of

[fn\*\*] [ ] (insert principal crime charged)

[fn\*\*] [ ] (list separately lesser included offense)

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## FOREPERSON

[fn\*] The foreperson should sign *only one* of the above (I or II). If the verdict is NOT GUILTY, then I. above should be signed. If the verdict is GUILTY then II. above should be signed.

[fn\*\*] If you find the defendant guilty of the crime charged or one of the lesser included offenses the foreperson must complete this GUILTY verdict by placing, in ink, an "X" in the appropriate square. ONLY ONE SQUARE may be filled in, with the remainder to remain unmarked.

### NOTES ON USE

This form may be used whenever a lesser included offense is necessarily involved in the crime charged. The jury should sign only one of the two alternatives. If the jury finds the defendant guilty then an "X" must be placed in the appropriate square in part II with the other squares remaining unmarked.

**E:15 STIPULATION FOR SEALED VERDICT**

District Court, [City and] County of \_\_\_\_\_, Colorado  
Case No. \_\_\_\_\_, Div. \_\_\_\_\_

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STIPULATION FOR SEALED VERDICT

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People of the State of Colorado  
vs.

\_\_\_\_\_,  
Defendant.

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Pursuant to Rule 31(a)(2), Crim.P. and Section 16-10-108 C.R.S. (2007), it is stipulated and agreed that in the above-entitled case the Court may instruct the jury that if they reach a verdict during the recess or adjournment of the Court they may seal their verdict which shall be retained by their foreman to be delivered to the Court at the opening of Court, and that after so sealing their verdict they may separate, to meet in the jury box at the opening of Court. It is further stipulated that such a verdict may be received by the Court as the lawful verdict of the jury.

[name]  
District

Attorney

Dated: \_\_\_\_\_ By \_\_\_\_\_  
Deputy

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for the Defendant

#### **NOTES ON USE**

This form should be used when a sealed verdict may be received as provided by rule of the Supreme Court of Colorado §16-10-108, C.R.S. (2007). A sealed verdict may be used in any criminal case upon stipulation of counsel for all parties except where punishment may be death or life imprisonment Crim. P. 31(a) (2)).

#### **SOURCE & AUTHORITY**

§16-10-108, C.R.S.

Crim. P. 31(a) (2).

COLJI-Crim. No 38:12 (1983)

**E:16 ORDER FOR SEALED VERDICT**

District Court, [City and] County of \_\_\_\_\_, Colorado  
Case No. \_\_\_\_\_, Div. \_\_\_\_\_

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ORDER FOR SEALED VERDICT

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People of the State of Colorado  
vs.

\_\_\_\_\_,  
Defendant.

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You are instructed that should you agree upon a verdict during the recess or adjournment of Court for the day, your verdict shall be reduced to writing, and your foreman shall sign it, enclose it in an envelope, seal the envelope and retain it, so sealed, to be delivered by the jury to the Court at the opening of Court. After so sealing your verdict you may separate, to meet in the jury box at the opening of Court. You will not disclose the result of your deliberations until your verdict is read in open Court.

\_\_\_\_\_  
Judge

**NOTES ON USE**

A sealed verdict may be used in any criminal case, except where the punishment may be death or life imprisonment, upon stipulation of counsel for all parties (see Form [38:12](#) which must be used in conjunction with this instruction). Crim. P. 31 (a) (2).

**SOURCE & AUTHORITY**



§16-10-108, C.R.S.

Crim. P. 31(a) (2).

COLJI-Crim. No 38:12 (1983)

**E:17 SUPPLEMENTAL INSTRUCTION—WHEN JURORS  
FAIL TO AGREE**

Since it appears to the Court that your deliberations have been somewhat lengthy without a verdict being reached, the Court wishes to suggest a few thoughts which you should consider in your deliberations, along with the evidence in the case and all of the instructions previously given.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching a verdict, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges — judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

**NOTES ON USE**

This instruction should only be used if it appears that a jury has been unable to agree. The trial court may, in its discretion, require the jury to continue its deliberation or it may discharge the jury.

The "Allen" charge or "Dynamite" instruction previously used in Colorado should never be substituted for this instruction. See, Directive No. 14 of the Chief Justice of the Colorado Supreme Court, dated September 22, 1971.

**SOURCE & AUTHORITY**

Directive No. 14 of the Chief Justice of the Colorado Supreme Court, dated September 22, 1971.

A.B.A., Standards Relating to Trial by Jury, § 5.4 (1968).

### **E:18 RETURN OF JURY AFTER POLLING**

In the polling of the jury one of your members made an answer which indicates that you may not have reached a unanimous verdict. For this reason, the Court asks you to return to the jury room for further consideration of your verdict. Whenever you have reached a unanimous verdict, you may return it into Court. If you are not unanimous, then you should continue your deliberations.

After you return to the jury room any member is free to change his vote on any issue submitted to you. Each juror is free to change his vote until the jury is discharged.

### **NOTES ON USE**

A jury may be polled upon the request of any party or upon the Court's motion after the verdict has been returned and before it is recorded. If upon polling, the Court determines that there is not unanimous concurrence, the Court may in its discretion direct the jury to retire for further deliberations or discharge the jury. Crim. P. 31(d). See also, A.B.A., Standards Relating to Trial by Jury, § 5.5 (1968).

### **SOURCE & AUTHORITY**

Crim. P. 31(d).

COLJI-Crim. No. 38:15 (1983)

**E:19 DISCHARGING EXTRA JUROR**

District Court, [City and] County of \_\_\_\_\_, Colorado  
Case No. \_\_\_\_\_, Div. \_\_\_\_\_

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ORDER DISCHARGING EXTRA JUROR(S)

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People of the State of Colorado  
vs.

\_\_\_\_\_  
Defendant.

At this day it appears to the Court that the matters at issue herein are ready for the consideration of the jury and that the twelve regular jurors herein called have been and now are all present as required;

IT IS ORDERED by the Court that \_\_\_\_\_  
[and \_\_\_\_\_ (insert name)  
\_\_\_\_\_] , the extra juror(s) hereto called, be  
and \_\_\_\_\_ (insert name)  
[he] [they] hereby [is] [are] discharged from further  
consideration of this cause.

BY THE COURT

\_\_\_\_\_  
Judge

Done in open Court this \_\_\_\_\_ day of \_\_\_\_\_, A.D.  
19\_\_.

**NOTES ON USE**

This is the order discharging the extra juror. It should be read to the jury just prior to submissions of the case. It also serves to inform the discharged jurors that they may leave.

The mandatory discharge instruction at E:20 should be read to the discharged extra jurors out of the presence of the other jurors immediately after this instruction is given.

**SOURCE & AUTHORITY**

§16-10-105, C.R.S.

Crim. P. 24(c).

COLJI-Crim No. 38:01 (1983)

## **E:20 FINAL CONCLUDING INSTRUCTION**

The bailiff will now escort you to the jury room. Upon reaching the jury room, you are to select one of your members to be the foreman of the jury. Your foreman will preside over your deliberations and shall sign whatever verdict you reach.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

Only one verdict shall be returned signed [for each count] [for each defendant] [for each count, for each defendant] and it and the unsigned verdicts and these instructions shall remain in the possession of your foreman until such time as they are called for in open court. [Upon reaching a verdict you will inform the bailiff of this Court, who in turn will notify the Court, and you will remain in your jury room until called into the Courtroom.]

You will be provided with \_\_\_\_\_ forms of verdict. (insert number)

When you have unanimously agreed upon your verdict(s) you will select the form(s) which reflect your verdict(s) and the foreman will sign it as the Court has stated. The unsigned form(s) shall also be returned with no markings on [it] [them].

The forms of verdict you will receive read as follows: (read all verdict forms). You are further instructed that no inferences are to be drawn from the order in which the Court reads the verdicts.

### **NOTES ON USE**

This instruction is intended to replace what has commonly

been referred to as the "Final Instruction." That instruction has been rephrased and now serves to inform the jury of its duty or function: see Instruction 3:01.

This instruction should conclude the set of instructions which are given to the jury.

The first three bracketed portions should be used as applicable depending upon the number of offenses charged and/or the number of defendants.

The fourth bracketed portion should be used when a sealed verdict is not being employed.

#### **SOURCE & AUTHORITY**

§16-10-105, C.R.S.

COLJI-Crim. No. 38:04

**E:21 VERDICT FORM – GENERAL**

District Court, [City and] County of \_\_\_\_\_, Colorado  
Case No. \_\_\_\_\_, Div. \_\_\_\_\_

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JURY VERDICT [Count No. \_\_\_\_\_], CHARGE  
OF \_\_\_\_\_.  
(insert crime charged)

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People of the State of Colorado  
vs.

\_\_\_\_\_  
Defendant.

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I. [fn\*] We, the jury, find the defendant,  
\_\_\_\_\_,  
name) (insert  
NOT GUILTY of [Count No. \_\_\_\_\_,]  
\_\_\_\_\_.  
charged) (insert crime

\_\_\_\_\_  
FOREPERSON

II. [fn\*] We, the jury, find the defendant,  
\_\_\_\_\_,  
(insert name)  
GUILTY of [Count No. \_\_\_\_\_,] \_\_\_\_\_.  
(insert crime charged)

\_\_\_\_\_  
FOREPERSON



[fn\*] The foreperson should sign *only one* of the above (I or II). If the verdict is NOT GUILTY, then I. above should be signed. If the verdict is GUILTY then II. above should be signed.

#### **NOTES ON USE**

The jury must sign only part I or part II. If a special verdict is called for in a particular case, then see instructions for special verdict forms. This verdict form cannot be used where there are lesser included offenses.